



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/171029

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 28, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 02, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's BadgerCare+ was correctly discontinued because of income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner and her now ex-husband operated a small law firm. Some of the work done by the firm included bankruptcy cases.
3. Petitioner's law firm dissolved in 2014 but Petitioner was still owed legal fees paid by her bankruptcy clients. These fees were paid by the clients to 1 of 2 bankruptcy court trustees as part of the debt

repayment plan worked out through the bankruptcy proceedings. The clients have five years under Chapter 13 of the bankruptcy code to make the payments. Each trustee has been sending Petitioner 1 check per month.

4. In November 2015 Petitioner contacted the agency and reported receiving two checks from the bankruptcy trustees totaling \$3067.76. The reason the amount was this high was because one or more clients paid their bill early and in full. The agency concluded that this income was Petitioner's regular monthly income and closed her BadgerCare+ case effective January 21, 2016 because of gross income in excess of BadgerCare+ income limits.
5. The average monthly repayment from the bankruptcy clients of Petitioner over the period of June 2015 through January 2016 was \$1204.42.
6. The outstanding balance of fees to be paid to Petitioner by clients through the Chapter 13 repayment plans is about \$6000.00 over the next 2 years.
7. For BadgerCare+ purposes the agency has determined Petitioner's household size to be one person – Petitioner herself.

### **DISCUSSION**

BadgerCare+ is Wisconsin's Medicaid program for those who are not elderly or disabled. Effective April 1, 2014, Wisconsin state law changed and lowered the amount of adjusted gross income a household can have and still be eligible for benefits to 100% of the Federal Poverty Level for adults and 300% for children. *Wis. Stat. § 49.471(4)(a)*. This change was to be effective January 1, 2014 but was held off until April 1 to assure coordination with other changes in healthcare options; especially the Affordable Care Act. 100% of the Federal Poverty Level for a 1 person household was \$980.83 per month as of February 1, 2015. *BadgerCare+ Eligibility Handbook (BEH), §50.1, Release 15-01*. It increased to \$990.00 as of February 1, 2016. *BEH, §§50.1, release 16-01*.

Also of some relevance here is the policy on fluctuating income:

#### **16.6 Fluctuating Income**

If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.  
*BEH, §16.6.*

The circumstances here are unique. I conclude that Petitioner's case was incorrectly closed based on the November checks. While her income fluctuates; other than November 2015 her highest monthly income in the other 6 months before the case closure was \$1828.51 and the lowest was \$421.61. The January 2016 amount was \$239.30. Though the average here from mid-2015 through January 2016 is about \$1200.00, the best available information is that only \$6000.00 remains owed to Petitioner by her former clients. If paid over the next 2 years the income should only be about \$250.00 per month. As Petitioner's income was only \$239.30 in January and is anticipated to be well under the \$990.00 going forward I conclude that Petitioner's BadgerCare+ was incorrectly discontinued.

The obligation remains for Petitioner to report to the agency income that causes the gross household income to exceed \$990.00.

### **CONCLUSIONS OF LAW**

That Petitioner's BadgerCare+ was incorrectly discontinued as the evidence demonstrates that Petitioner's income is under BadgerCare+ income limits.

**THEREFORE, it is**

**ORDERED**

That this case is remanded to the agency with instructions to restore Petitioner's BadgerCare+ eligibility backdated to January 1, 2016. This must be done within 10 days of the date of this Decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of March, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 15, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability